

passengers to slow down the bus, the driver did not pay any heed. At about 2:45 P.M., when the bus reached near Barnala barrier near Mehal Mubarak Gurudwara, suddenly, a child came running on the road and driver of the bus abruptly applied the brakes. The driver could not control the bus due to sudden abrupt application of brakes by driver, deceased - Jatinder Singh who was standing near back door fell on the road and had received multiple injuries. The bus was stopped and the injured was taken to Civil Hospital, Sangrur. Deceased was referred to Rajindra Hospital, Patiala and from there to PGI Chandigarh where he was declared dead. His post-mortem was conducted at PGI Chandigarh.

3. It was the case of the claimant that the accident had taken place due to rash and negligent driving of respondent No.2. Respondent No.1-owner of the bus had duly appeared and contested the claim petition. It was asserted that the accident was an act of God as the driver was driving the vehicle in normal manner and was not over-speeding. It was asserted that because the bus Conductor had not locked the door and therefore, the respondents cannot be held liable for the injuries and death of the deceased. A prayer for dismissal of the claim petition was made. From the pleadings of the parties, following issues were framed:-

- “1. Whether accident dated 16.05.2015 at about 2.45 p.m. resulting in death of Jatinder Singh occurred on account of rash and negligent driving of vehicle No. PB-11-U-6773 by respondent No.2? OPP
2. Whether the claimants are entitled to compensation for death of Jatinder Singh, if so, to what extent and from whom? OPR.
3. Whether the petition is not maintainable? OPR.
4. Relief.”

4. For the purposes of the present appeals, only issue No. 1 is relevant as in both the appeals, claimants as well as respondent No.1 i.e. owner of offending bus are trying to shift the entire blame on the other side. It is the case of the claimants that the accident had occurred on account of sole rash and negligent driving of the driver, whereas, the case of respondent No.1 i.e. the owner of the offending vehicle is that it was the deceased, who was at fault as he had not closed the doors of the bus and was wrongly standing on the gate.

5. Learned Motor Accident Claims Tribunal (hereinafter referred to as 'the Tribunal') after considering respective contentions, decided issue No.1 in favour of the claimants by holding that the accident dated 16.05.2005 was a result of contributory rash and negligent driving on the part of respondent No.2 i.e. the driver to the extent of 70% and on account of negligence of the deceased to the extent of 30%.

6. It is the above finding given by the learned Tribunal, which is being challenged by both the sets of appellants. On one hand, appellant i.e. the owner of the offending vehicle is claiming that the contributory negligence should be 50:50 and the learned Tribunal has erred in assessing fault on the part of the deceased to the extent of 30%. Whereas it is the case of the appellants-claimants that the deceased was not at all at fault. It was due to rash and negligent driving of the driver i.e. respondent No.2 that the accident had occurred and deceased had died.

7. On consideration, I find that the manner of accident is not being disputed by either of the parties. It is the case of the claimants that accident

had taken place when a boy suddenly came on the road and driver had abruptly applied the brakes. On account of sudden application of brakes, the deceased had fallen from the back door of the bus. On the other hand, the case of the respondents, especially that of the owner of the offending vehicle is that the deceased was at fault as he had not closed the back door of the bus which he was duty-bound to do being a Conductor and he had died on account of his own fault.

8. From the defence taken by respondent No.1-owner of the offending vehicle, it is, therefore, clear that the manner of occurrence that a boy suddenly came on road and driver had suddenly applied the brake with force is not being disputed by respondent No.1-owner of the offending vehicle. If the facts of the present case are considered, in the light of duties of Driver as well as Conductor, it is clearly made out that both Driver and Conductor had contributed in the accident. The abrupt application of brakes that resulted in great force throwing Conductor out of the bus goes to show that offending vehicle was at speed. Had it been driven cautiously, the driver could have very well anticipated and taken measures to stop the bus in advance and not by applying brake by force resulting in throwing the Conductor out of bus. Similarly, the Conductor cannot be absolved fully as it is the duty of Conductor to ensure that gates of bus are closed and thereafter, bus is set in motion. However, in the present case, the rear gate of the bus was not closed. Similarly, Conductor should have been cautious and should not have stood on the open gate of the bus. Therefore, both driver and deceased/Conductor have contributed in causing the accident. The finding of learned Tribunal, therefore, cannot be at fault to this extent.

9. Coming to the next argument, raised by both the sides that contribution by other side was lesser than their side. On one hand, it is the case of owner of the offending vehicle that both driver and conductor are liable to the extent of 50%. On the other hand, it is the case of the claimants that deceased is not at all liable and at the most liable to the minor extent of 10%.

10. Keeping in view the manner of accident, as noted above, I do not find any merit in the contentions raised by either of the sides. The learned Tribunal has rightly appreciated the facts and circumstances of the present case, which have gone undisputed and has rightly concluded the extent of contribution on the part of the driver and conductor. The driver of a vehicle is under a great responsibility and duty to drive the vehicle cautiously by following all traffic rules. Sudden traffic on the road is always a possibility and therefore, the role of a driver to ply bus cautiously is greater than the passenger/conductor, who are travelling in the bus. Keeping in view the role to be played by a driver, the contributory negligence to the extent of 70% on his part cannot be held to be excessive. Similarly, Conductor i.e. the deceased in the present case is not simply a passenger but was a Conductor. He was under duty to ensure that vehicle is plied by driver only after he ensures closing of the doors. The deceased had failed to do so, which in turn was fatal for him. Therefore, there is no fault in the finding of the learned Tribunal.

11. Before parting with this judgment, it would be pertinent to note the following judgments which were referred by the learned counsel for the owner of the offending vehicle.

**“1. Oriental Insurance Co. Ltd. And others Vs.
Hasmat Bi And others (Bombay) (DB); 1995(1) ACC 1
2. Mittar Sain Vs. Sawaran Singh (P&H) 2015(3) RCR
(Civil) 513”**

12. On consideration, I find that none of the judgments referred by learned counsel for the respondent/owner of the offending vehicle is of any help to this case. All the cases referred by him duly notices in what circumstances negligence can be declared as contributory or composite negligence, Duties of conductor were also noted. The present case is a case of contributory negligence which is not even being disputed by the either side. None of the judgments lays down any principles of law for determining extent of contributory negligence. The extent of contributory negligence can only be determined in view of the facts and circumstances of each case and in the present case, I find discretion exercised by the Tribunal to be in accordance with law and no interference is required in the impugned judgment.

13. Both the appeals; one preferred by respondent-owner of offending vehicle and another preferred by claimants are, accordingly, dismissed.

14. Pending miscellaneous application(s), if any, shall also stand disposed of.

05.08.2025
Janki

(PARMOD GOYAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No